

ELECTRONICALLY FILED  
June 19, 2006

STUTMAN, TREISTER & GLATT, P.C.  
FRANK A. MEROLA  
(CA State Bar No. 136934)  
EVE H. KARASIK  
(CA State Bar No. 155356)  
CHRISTINE M. PAJAK  
(CA State Bar No. 217173), Members of  
1901 Avenue of the Stars, 12<sup>th</sup> Floor  
Los Angeles, California 90067  
Telephone: (310) 228-5600  
Facsimile: (310) 228-5788  
Email: [fmerola@stutman.com](mailto:fmerola@stutman.com)  
[ekarasik@stutman.com](mailto:ekarasik@stutman.com)  
[cpajak@stutman.com](mailto:cpajak@stutman.com)

SHEA & CARLYON, LTD.  
JAMES PATRICK SHEA  
(Nevada State Bar No. 000405)  
CANDACE C. CARLYON  
(Nevada State Bar No. 002666)  
SHLOMO S. SHERMAN  
(Nevada State Bar No. 009688)  
233 South Fourth Street, Second Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 471-7432  
Facsimile: (702) 471-7435  
Email: [jshea@sheacarlyon.com](mailto:jshea@sheacarlyon.com)  
[ccarlyon@sheacarlyon.com](mailto:ccarlyon@sheacarlyon.com)  
[ssherman@sheacarlyon.com](mailto:ssherman@sheacarlyon.com)

Counsel for the Official Committee Of  
Equity Security Holders Of USA Capital First Trust Deed Fund, LLC

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re: ) BK-S-06-10725-LBR  
USA COMMERCIAL MORTGAGE COMPANY, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10726-LBR  
USA CAPITAL REALTY ADVISORS, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10727-LBR  
USA CAPITAL DIVERSIFIED TRUST DEED FUND, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10728-LBR  
USA CAPITAL FIRST TRUST DEED FUND, LLC, ) Chapter 11  
Debtor. )

In re: ) BK-S-06-10729-LBR  
USA SECURITIES, LLC, ) Chapter 11  
Debtor. )

**Affects**

- ☐ All Debtors  
☒ USA Commercial Mortgage Co.  
☐ USA Securities, LLC  
☐ USA Capital Realty Advisors, LLC  
☒ USA Capital Diversified Trust Deed Fund LLC  
☒ USA First Trust Deed Fund, LLC

Date: June 21, 2006  
Time: 9:30 a.m.  
Place: Courtroom #1

**LIMITED OPPOSITION TO MOTION FOR AUTHORITY TO FORBEAR AND TO  
PROVIDE FURTHER FUNDING FOR CERTAIN OUTSTANDING LOANS (AFFECTS  
DEBTORS USA COMMERCIAL MORTGAGE COMPANY, USA CAPITAL FIRST  
TRUST DEED FUND LLC AND USA CAPITAL DIVERSIFIED TRUST DEED FUND  
LLC)**

1 **TO THE HONORABLE LINDA B. RIEGLE, UNITED STATES BANKRUPTCY JUDGE:**

2 The Official Committee of Equity Security Holders of USA Capital First Trust  
3 Deed Fund, LLC (the "First Trust Deed Committee") appointed in the above-captioned  
4 bankruptcy cases (the "Chapter 11 Cases"), hereby submits its limited opposition (the  
5 "Opposition") to the "Motion for Authority to Forbear and To Provide Further Funding for  
6 Certain Outstanding Loans" (the "Motion"), filed by USA Commercial Mortgage Company,  
7 USA Capital First Trust Deed Fund LLC and USA Capital Diversified Trust Deed Fund, LLC,  
8 certain of the above-captioned debtors and debtors and possession (the "Debtors"), based on the  
9 facts and argument set forth below:

10 1. On June 9, 2006, the Debtors filed the Motion seeking approval to forbear  
11 or provide additional funds to four projects subject to first priority, secured loans made by  
12 various investors, including the USA Capital First Trust Deed Fund, LLC (the "FTDF"). The  
13 First Trust Deed Committee has carefully reviewed the Motion, engaged in discussion with the  
14 Debtors and performed its own diligence on the forbearance and funding requests for the four  
15 projects. The First Trust Deed Committee's response on each request is as follows.

16 2. Franklin Stratford Project – The First Trust Deed Committee consents to  
17 the proposal to sell the excess collateral and use the proceeds therefrom to pay the portion of the  
18 \$864,936.67 remaining due to Petra, Inc., the project contractor, with any proceeds balance to be  
19 remitted to pay down the Franklin Stratford loan or to be placed in an escrow account for the  
20 benefit of the project lenders.

21 3. Boise Gowan Project – FTDF is not a lender on the Boise Gowan project.  
22 However, FTDF has an interest in USA Commercial Mortgage Company retaining sufficient  
23 funds to operate its business as loan servicer. FTDF has been advised that the Boise Gowan  
24 project is extremely profitable and believes that the developer should fund or at a minimum  
25 make a significant contribution to the additional \$125,000 allegedly needed for the project at this  
26 time. Furthermore, two of the guarantors on the loan are Thomas A. Hantges and Joseph D.  
27 Malinowski, the former insiders of the Debtors, and there is no disclosure as to whether these  
28 insiders have an interest in the borrower Boise/Gowan 93 LLC. As with the Franklin Stratford

1 project, the First Trust Deed Committee believes that the burden of providing funding needs  
2 above the original loan amounts should be shared among all parties in interest.

3 4. Amesbury/Hatters Point – The First Trust Deed Committee supports the  
4 sale of the three remaining condominiums in Phase 1 of the project and the corresponding partial  
5 collateral releases in exchange for the net sales proceeds of \$1.5 million. As provided for in the  
6 Motion, the net sales proceeds should be placed in the Collection Account and all liens claims  
7 and interests that attached to the real property will attach to the proceeds with the same validity,  
8 priority and enforceability. Use of the net sale proceeds by the Debtors shall be limited and  
9 governed by the applicable orders of the Court.

10 5. Homes for America Loans ("HFA Loans") – FTDF owns a 100% interest  
11 in the loan to HFAH-Monaco, LLC (the "Monaco Loan"). There is \$4 million in principal and  
12 approximately \$1.2 million in interest due on the Monaco Loan, and the Debtors have deemed  
13 the Monaco Loan a non-performing loan. The current maturity date is December 19, 2006.  
14 FTDF has no interest in any of the other three HFA Loans that are the subject of the Motion.

15 6. The Debtors seek to enter into a forbearance agreement with the borrower  
16 on the Monaco Loan until January 1, 2007. The Debtors do not attach a sample forbearance  
17 agreement and state only that they will "forbear from declaring a default and . . . forbear from  
18 exercising remedies." The Committee cannot evaluate the forbearance request absent the terms  
19 and conditions of such forbearances, including whether the investors will receive any  
20 consideration for the forbearance. Further, the Debtors have not answered many of the  
21 Committee's questions about the Monaco Loan, including why the Monaco Loan is a non-  
22 performing loan (and not just because the interest is due, but why such interest is due), whether  
23 the former insiders or any of their entities are borrowers on this loan, whether there are  
24 guarantees on the loan and if so, the identity and solvency of the guarantors as well as whether  
25 the guarantees are collateralized. While the Committee would very much like to see this loan  
26 refinanced and paid off in the same manner as the three other HFA loans described in the  
27 Motion, absent an analysis of the answers to these questions and an understanding of the  
28

1 forbearance terms and conditions, the Committee cannot consent to and opposes the forbearance  
2 request.

3 **WHEREFORE**, the Committee hereby opposes the Motion on the limited  
4 grounds set forth above.

5  
6 Respectfully submitted this 19th day of June, 2006.

7  
8 /s/ Eve H. Karasik

9 FRANK A. MEROLA (CA State Bar No. 136934),  
10 EVE H. KARASIK (CA State Bar No. 155356), and  
11 CHRISTINE M. PAJAK (CA State Bar No. 217173), Members of  
12 STUTMAN, TREISTER & GLATT, P.C.  
13 1901 Avenue of the Stars, 12th Floor  
14 Los Angeles, CA 90067  
15 Telephone: (310) 228-5600

16 and

17 CANDACE C. CARLYON  
18 Shea & Carlyon, Ltd.  
19 233 S. Fourth Street, Suite 200  
20 Las Vegas, NV 89101  
21 Telephone: (702) 471-7432  
22 COUNSEL FOR THE  
23 OFFICIAL COMMITTEE OF EQUITY SECURITY HOLDERS  
24 OF USA CAPITAL FIRST TRUST DEED FUND, LLC  
25  
26  
27  
28